S.B. CIVIL WRIT PETITIO NO. 3532/95
(MANGAL SINGH VS. STATE OF RAJ. & ORS.)

DATE : 29.1.2007

HON'BLE MR. RAJESH BALIA,J.

Mr. K.R.Choudhary, for the petitioner.
Mr. L.R.Upadhyay, Dy. G.A.

Heard learned counsel for the parties. None appeared for respondent No.2.

The facts which emerge from record before us and on perusal of the impugned orders are that the petitioner was allotted a plot at village Sau Padamsingh Tehsil Baitu District Barmer on 2.11.81 ad-measuring 70 ft. X 40 ft. on payment of price, as determined by the Panchayat, on the basis of old possession. After about 11 years of the allotment, a complaint was made by the respondent Heera lal alleging therein that the allotment made in favour of the present petitioner was illegal to extent undue advantage by surpanch.

After receiving this complaint, the Collector, Barmer issued a show cause notice to the petitioner to which reply was submitted by the present petitioner, copy of which has been placed on record during the course of hearing. The collector has recorded that reply was submitted by the

petitioner on 4.11.92. The Collector observed that no record of proceedings was kept and the allotment has been given without verification of the old possession and there is no evidence of old possession and also the Sarpanch alone has no right to issue patta. It also considered the objection of the objector that patta has been granted of the land which resulted in obstruction of the way to the school.

These facts were denied by the petitioner in the written submission before the Collector. It was clearly asserted that the main gate of the school is towards south of the school whereas the plot in question is situated towards the western side of the school and, therefore, the way of the school could not be and is not obstructed by the allotment of the plot in question. In his reply the petitioner made a detailed reference to the extent the structure of the school with the respective rooms, the main gate and lab constructed in the school from time to time and has also submitted in his reply specifically that his constructed house is standing thereon since 1983 and two shops constructed by the petitioner are in occupation of Guman Ram S/o Krishan and Dalu Ram for last about more than 7 years. The building constructed by the petitioner is occupied by Thar Anchlik Gramin Bank.

Apparently, all these constructions have made more than 7 years before filing of the complaint which could not have escaped notice of the objector and had there been any substance in the complaint, it would not have waited so long.

However, without considering the petitioner's submissions about situation at site, both about school and constructions in possession of Rural Bank and other shops, the objections were sustained by oral testimony of Buddaram vide order dated 8.6.93 and the allotment made in favour of the petitioner was cancelled.

The petitioner preferred an appeal before the Revenue Appellate Authority which was held to be not maintainable vide order dated 30.6.95.

Hence, this petition.

The petitioner along with the petition has placed on record the resolution passed by the Gram Panchayat, Sau Padamsingh dated 8.9.81 which was attended by Sarpanch along with four other panchas including

upsarpanch, who all had appended their signatures or thumb impression, as the case may be. As per the Annex. P/1, three resolutions were passed and adopted by the Panchayat. The business transacted by Panchayat included the consideration of applications for allotment of land made by three different persons by the same resolution namely petitioner Mangal Singh, Bhera Ram & Mota Ram. The certified copy of the proceedings of the Panchayat dt. 18.9.81 and the correctness of the document Annex. P/1 has not been disputed by the respondent No.1, who alone has chosen to file reply.

In the aforesaid circumstances, it is apparent firstly that allotment of plot was not by the Sarpanch alone as alleged by the objector and found by the Collector, but was a collective action by the Panchayat. It also belies the Collector's finding that no proceedings were drawn before allotment was made in favour of the petitioner and finding has been reached on ipsi dixit of the objector even without caring to secure the record from Panchayat and record of Panchayat has been withheld from the proceeding which has resulted in deflecting the course of proceedings. The very fact that by same proceedings allotment to three different persons have been made after considering the price fixed for

the allotment of the land and the same mutation proceedings were also considered, belies the statement of Buddharam that no proceedings were recorded and allotment was made merely on the direction of the then Sarpanch.

This also reflects the causal manner in which the objector's objections had been considered with the close mind without any quest for verification of the allegation made by the objector. The facts about physical existence of construction and alleged obstruction of way to school could have verified by the site inspection and nothing more was required yet no attempt was made to procure such verification. The Collector has not even considered that on the basis of allotment made in 1981, and is in occupation of not merely by private individuals but by the rural bank which is discharging its functions at the land in question and was in occupation for more than seven years which could have gone to establish the petitioner's long possession of land in question because buildings could not have been constructed overnight. All these factors having not been considered which were brought to notice of the Collector as part of the written statement made by the petitioner, the order of the Collector suffers from errors apparent on record,

and suffers from being founded on unfair procedure. Hence cannot be sustained.

Accordingly, the writ petition is allowed the impugned order of the Collector dated 8.6.93 is quashed.

Since the Revenue Appellate Authority has not decided anything and the Court is satisfied that the order of the Collector suffers from an errors apparent from the record, to further examine the appellate order by Revenue Appellate Authority is not necessary.

There shall be no orders as to costs.

(RAJESH BALIA),J.

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